

(c) *Subsidies for adaptation of existing facilities to new environmental requirements.* If the Secretary determines that a subsidy is given to upgrade existing facilities to environmental standards in excess of minimum statutory or regulatory requirements, the subsidy will not qualify for non-countervailable treatment under section 771(5B)(D) of the Act and the Secretary will treat the entire amount of the subsidy as countervailable.

§ 351.523 Upstream subsidies.

(a) *Investigation of upstream subsidies*—(1) *In general.* Before investigating the existence of an upstream subsidy (see section 771A of the Act), the Secretary must have a reasonable basis to believe or suspect that all of the following elements exist:

(i) A countervailable subsidy, other than an export subsidy, is provided with respect to an input product;

(ii) One of the following conditions exists:

(A) The supplier of the input product and the producer of the subject merchandise are affiliated;

(B) The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's-length transaction for an unsubsidized input product; or

(C) The government sets the price of the input product so as to guarantee that the benefit provided with respect to the input product is passed through to producers of the subject merchandise; and

(iii) The *ad valorem* countervailable subsidy rate on the input product, multiplied by the proportion of the total production costs of the subject merchandise accounted for by the input product, is equal to, or greater than, one percent.

(b) *Input product.* For purposes of this section, "input product" means any product used in the production of the subject merchandise.

(c) *Competitive benefit*—(1) *In general.* In evaluating whether a competitive benefit exists under section 771A(b) of the Act, the Secretary will determine whether the price for the subsidized input product is lower than the benchmark input price. For purposes of this

section, the Secretary will use as a benchmark input price the following, in order of preference:

(i) The actual price paid by, or offered to, the producer of the subject merchandise for an unsubsidized input product, including an imported input product;

(ii) An average price for an unsubsidized input product, including an imported input product, based upon publicly available data;

(iii) The actual price paid by, or offered to, the producer of the subject merchandise for a subsidized input product, including an imported input product, that is adjusted to account for the countervailable subsidy;

(iv) An average price for a subsidized input product, including an imported input product, based upon publicly available data, that is adjusted to account for the countervailable subsidy; or

(v) An unadjusted price for a subsidized input product or any other surrogate price deemed appropriate by the Secretary.

For purposes of this section, such prices must be reflective of a time period that reasonably corresponds to the time of the purchase of the input.

(2) *Use of delivered prices.* The Secretary will use a delivered price whenever the Secretary uses the price of an input product under paragraph (c)(1) of this section.

(d) *Significant effect*—(1) *Presumptions.* In evaluating whether an upstream subsidy has a significant effect on the cost of manufacturing or producing the subject merchandise (see section 771A(a)(3) of the Act), the Secretary will multiply the *ad valorem* countervailable subsidy rate on the input product by the proportion of the total production cost of the subject merchandise that is accounted for by the input product. If the product of that multiplication exceeds five percent, the Secretary will presume the existence of a significant effect. If the product is less than one percent, the Secretary will presume the absence of a significant effect. If the product is between one and five percent, there will be no presumption.

(2) *Rebuttal of presumptions.* A party to the proceeding may present information to rebut these presumptions. In evaluating such information, the Secretary will consider the extent to which factors other than price, such as quality differences, are important determinants of demand for the subject merchandise.

§ 351.524 Allocation of benefit to a particular time period.

Unless otherwise specified in §§ 351.504-351.523, the Secretary will allocate benefits to a particular time period in accordance with this section.

(a) *Recurring benefits.* The Secretary will allocate (expense) a recurring benefit to the year in which the benefit is received.

(b) *Non-recurring benefits*—(1) *In general.* The Secretary will normally allocate a non-recurring benefit to a firm over the number of years corresponding to the average useful life (“AUL”) of renewable physical assets as defined in paragraph (d)(2) of this section.

(2) *Exception.* The Secretary will normally allocate (expense) non-recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of relevant sales (e.g., total sales, export sales, the sales of a particular product, or the sales to a particular market) of the firm in question during the year in which the subsidy was approved.

(c) *“Recurring” versus “non-recurring” benefits*—(1) *Non-binding illustrative lists of recurring and non-recurring benefits.* The Secretary normally will treat the following types of subsidies as providing recurring benefits: Direct tax exemptions and deductions; exemptions and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies. The Secretary normally will treat the following types of subsidies as providing non-recurring benefits: equity infusions, grants, plant

closure assistance, debt forgiveness, coverage for operating losses, debt-to-equity conversions, provision of non-general infrastructure, and provision of plant and equipment.

(2) *The test for determining whether a benefit is recurring or non-recurring.* If a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or non-recurring:

(i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;

(ii) Whether the subsidy required or received the government’s express authorization or approval (i.e., receipt of benefits is not automatic), or

(iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

(d) *Process for allocating non-recurring benefits over time*—(1) *In general.* For purposes of allocating a non-recurring benefit over time and determining the annual benefit amount that should be assigned to a particular year, the Secretary will use the following formula:

$$A_k = \frac{y/n + [y - (y/n)(k - 1)]d}{1 + d}$$

Where:

A_k = the amount of the benefit allocated to year k ,

y = the face value of the subsidy,

n = the AUL (see paragraph (d)(2) of this section),

d = the discount rate (see paragraph (d)(3) of this section), and

k = the year of allocation, where the year of receipt = 1 and $1 \leq k \leq n$.

(2) *AUL*—(i) *In general.* The Secretary will presume the allocation period for non-recurring subsidies to be the AUL of renewable physical assets for the industry concerned as listed in the Internal Revenue Service’s (“IRS”) 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77-10, 1977-1, C.B.